



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

M

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,996	07/22/2003	Thomas M. Risch	LMI-002	8183
36822	7590	08/05/2004	EXAMINER	
GORDON & JACOBSON, P.C. 65 WOODS END ROAD STAMFORD, CT 06905			MAUST, TIMOTHY LEWIS	
			ART UNIT	PAPER NUMBER
			3751	
DATE MAILED: 08/05/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/624,996	Applicant(s) RISCH ET AL.	
	Examiner Timothy L Maust	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6,7 and 12-32 is/are rejected.
- 7) ☒ Claim(s) 3,5 and 8-11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/22/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4, 6, 7 and 12-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Cunningham.

In regard to claims 1, 2, 12-16 and 19, the Cunningham reference discloses a "container" 10 having an "opening" (defined at the point of entry of stem 15), a "fill valve" 20 including an "upper split portion" 27 defining two relatively "flat bills" 31, a "barb" 28, a "lower annular flange" (opposite end of split 27), an "annular groove" (just above annular flange discussed supra), a "cap" 9 (absent further structure), an actuatable "valve" (15 and 19), as claimed.

In regard to claims 4, 6, 7, 17 and 18, see "separating element" (defined by rubber seal 16 in Figure 2).

Claims 15 and 20-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Scheindel.

In regard to claim 15, 20, the Scheindel reference discloses a refillable and repressurizable "container" having an "open end", a "cap" and an actuatable outlet "valve" (typical pressurized container; see col. 1) a "surface" 20 with a "hole" 18 having an "edge" 19, a resilient fill "valve" 10 defining an "interior space" 22 having a "head portion" 12, a reduced diameter "neck" 16 and a "flared opening portion" 14 at least one "separating element" 22, a "needle" 34, a "pressurization station" (see col. 3, lines 12-54), as claimed.

In regard to claims 21 and 22, the "base" 28 is larger than the tapered "neck" (26a-b).

Claims 26 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Demarest et al.

In regard to claims 26 and 30, the Demarest et al. reference discloses a "pressurizing system" comprising a "pressurization station" 10 including a "compressor" 12, a "needle" 20, an "upstanding collar" 18 and "beveled surface" 16, a "pressurizable container" 14 having a actuatable "valve" 22 and a lower end provided with a "fill valve" 24, as claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Scheindel.

The Scheindel reference discloses the invention substantially as claimed (discussed supra). It would have been an obvious matter of design choice to make the needle head of the Scheindel device into a frustoconical shape, since applicant has not disclosed that a frustoconical shape rather than a tapered shape solves any stated problem and it appears that the invention would perform equally well with a tapered.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Scheindel in view of Demarest et al.

The Scheindel reference discloses the invention substantially as claimed (discussed supra), but does not disclose the specifics of the pressurization station having an upstanding collar surrounding the needle. However, the Demarest et al. reference (discussed supra) discloses a pressurization station having an upstanding collar surrounding the needle to guide and support a container to be refilled. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a pressurization station having an upstanding collar

Art Unit: 3751

surrounding the needle (if not already) as, for example, taught by the Demarest et al. reference to guide and support a container to be refilled.

Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Demarest et al. in view of Cunningham.

The Demarest et al. reference discloses the invention (discussed supra) substantially as claimed including the valve 24 being a pressure activated valve, but does not disclose the valve being a slit or duck bill valve. The Cunningham reference (discussed supra) discloses a refillable container having a slit valve 20 for pressure filling the container. Therefore, it would have been obvious to one of ordinary skill in the art to substitute the slit valve for the umbrella valve on the Demarest et al. device as, for example, taught by Cunningham wherein so doing would amount to mere substitution of one functional equivalent valve for another within the same art and the selection of any of these valves would work equally well in the Demarest et al. device.

Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Demarest et al.

The Demarest et al. reference discloses the invention (discussed supra) substantially as claimed, but does not explicitly disclose the clearance dimension of the container with the collar. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the clearance dimensions between the container and collar as claimed, since it has been held that discovering an optimum value of a result

Art Unit: 3751

effective variable involves only routine skill in the art. *In re Boesch*, 617F 2d 272, 205 USPQ 215 (CCPA 1980).

Allowable Subject Matter

Claims 3, 5 and 8-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The H.D. Bartels and Mietz references pertain to various refillable containers having refill valves, similar to Applicant's device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L Maust whose telephone number is (703) 308-3390. The examiner can normally be reached on Tue. - Fri. 6:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (703) 308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Timothy L Maust
Primary Examiner
Art Unit 3751

Tlm
8/3/04